

# STORM WATER REQUIREMENTS FOR CONSTRUCTION ACTIVITY

## **What is Montana's Storm Water Discharge Permit Program for Construction Activity?**

The 1972 amendments to the Federal Water Pollution Control Act, later referred to as the Clean Water Act (CWA), prohibit the discharge of any pollutant to waters of the United States unless the discharge is authorized by a National Pollutant Discharge Elimination System (NPDES) permit.

In Montana, the Department of Environmental Quality (DEQ) is authorized to administer the NPDES Program through the Montana Pollutant Discharge Elimination System (MPDES) Program.

Traditionally, efforts to improve water quality under the NPDES program have focused on reducing pollutants in industrial process wastewater and municipal sewage treatment plant discharges. Over time, it became evident that more diffuse sources of water pollution, such as storm water runoff from construction sites, are also significant contributors to water quality problems.

Typically, sediment runoff rates from construction sites are 10 to 20 times greater than those from agricultural lands, and 1,000 to 2,000 times greater than those of forestlands. During a short period of time, construction activity can contribute more sediment to streams than is naturally deposited over several decades. This accelerated deposition causes both physical and biological harm to Montana's surface waters.

In 1990, the federal Environmental Protection Agency (EPA) promulgated rules establishing Phase I of the NPDES storm water program. Phase I addressed, among other discharges, discharges from larger construction activities disturbing five acres or more of land. In Montana, since 1992 the DEQ has been permitting these storm water discharges from larger construction projects through the MPDES Program.

Phase II of the NPDES storm water program covered smaller construction activities disturbing between one and five acres. Phase II was promulgated by EPA in 1999. Montana has incorporated the MPDES Phase I and II storm water requirements into the Administrative Rules of Montana (ARM), Title 17, Chapter 30, Subchapters 11, 12, and 13.

## **What Requires Storm Water Discharge Permit Coverage Under Montana Rules?**

A "storm water discharge associated with construction activity," as defined in ARM 17.30.1102(28), requires permit coverage. Construction activity which results in the "disturbance" of equal to or greater than one acre of total land area will need to obtain permit coverage under the **General Permit for Storm Water Discharges Associated with Construction Activity** (called "General Permit"). Construction activity includes the disturbance of less than one acre of total land area that is part of a "larger common plan of development or sale" if the larger common plan will ultimately disturb one acre or more (*such as subdivisions with phased work over years*).

## **What is the Definition of "Disturbance" of a Construction Site?**

"Disturbance" related to construction activity means areas that are subject to clearing, excavating, grading, stockpiling earth materials, and placement/removal of earth material

performed during construction projects. For construction activities that result in disturbances of less than five acres of total land area, the acreage of disturbance does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

### **Who Obtains General Permit Coverage?**

For a “storm water discharge associated with construction activity,” an “owner or operator” would obtain General Permit coverage. “Owner or operator” is defined in the Montana Water Quality Act at 75-5-103(21), MCA, as “a person who owns, leases, operates, controls, or supervises a point source.” This “owner or operator” will be fully responsible for the permit. This permittee would typically be the construction project owner, primary earthwork contractor, or general contractor for the project, although it could be another party. Permitting a single “owner or operator” is a change from the “co-permittee” system used prior to 2007.

### **How does an “Owner or Operator” Obtain General Permit Coverage?**

An “owner or operator” requiring coverage under the General Permit for their “storm water discharge associated with construction activity” obtains this permit coverage by the DEQ’s Water Protection Bureau receiving the following **Notice of Intent (NOI) Package** items by the proposed construction start date:

- **NOI form** with all requested items completed;
- **Storm Water Pollution Prevention Plan (SWPPP)** addressing all requested items in the General Permit (*a form has been developed for optional use if desired*); and
- **Application fee and first year annual fee** based on the number of discharges (*see below*) and type of construction project (*either residential (single family dwelling), or commercial/public*).

### **Permittees must read and be familiar with the General Permit to assist in the completion of the forms and submittal of the NOI Package.**

For the specified “owner or operator,” formal signatory requirements allow only certain qualified people to sign NOI forms and other forms or reports.

Permit transfers to a different “owner or operator” are performed by submittal of a complete “Permit Transfer Notification” (PTN) form and a \$200 fee.

The permittee must submit a **Notice of Termination (NOT)** form when the construction activity is complete and the site has achieved “final stabilization.” “Final stabilization” means the time at which all soil-disturbing activities at a site have been completed and a vegetative cover has been established with a density of at least 70% of the pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. Final stabilization using vegetation must be accomplished using seeding mixtures or forbs, grasses, and shrubs that are adapted to the conditions of the site. Establishment of a vegetative cover capable of providing erosion control equivalent to pre-existing conditions at the site will be considered final stabilization. All applicable fees must be paid before permit coverage can be terminated.

### **What is the Purpose of a Storm Water Pollution Prevention Plan (SWPPP)?**

A SWPPP is developed and implemented by the permittee to protect state surface water from pollutants, primarily sediment. A SWPPP includes three major components:

1. Assessing the characteristics of the site such as nearby surface waters, topography, and storm water runoff patterns;
2. Identifying potential sources of pollutants such as sediment from disturbed areas, and stored wastes or fuels; and
3. Identifying Best Management Practices (BMPs) which will be used to minimize or eliminate the potential for these pollutants to reach surface waters through storm water runoff.

BMPs at construction activity sites typically consist of various erosion and sediment control measures. Erosion and sediment control at construction sites is best accomplished with proper planning, installation, and maintenance of controls.

Most erosion and sediment controls require regular maintenance to operate correctly. Accumulated sediments should be removed frequently and materials should be checked periodically for wear. Regular inspections by qualified personnel should be performed after major storm or snowmelt events and as required in the General Permit.

### **What are the Fees?**

Fees based on the number of discharges are determined by multiplying the appropriate fee amount by the number of named or perennial surface waters (*as shown on a USGS topographic map*) which could receive storm water runoff from the construction activity site. The NOI (application) fee amount per discharge for storm water associated with construction activity is \$450.00 for commercial or public projects, and \$250.00 for residential (*single family dwelling*) projects. The annual fee amount per discharge is \$450.00 (*per calendar year*) for commercial or public projects, and there is no annual fee for residential (*single family dwelling*) projects. Fee amounts are specified as of April 2007. Actual fee amounts are subject to change and the following website must be referenced for updated fee information.

### **Useful Guidance**

EPA Menu of Construction BMPs Website (use "Fact Sheets") at:

**<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm>**